

NIH Policy Manual

1311 - Preventing and Addressing Harassment and Inappropriate Conduct

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Release Date: 9/25/2018 ?

Transmittal Notice

1. **Explanation of Material Transmitted:** This new chapter describes the NIH policies and procedures regarding allegations of harassment and inappropriate conduct in the workplace.
2. **Filling Instructions:**
 - a. Remove: n/a
 - b. Insert: NIH Manual Chapter 1311, dated 9/25/2018.

PLEASE NOTE: For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Policy Manual, contact the Division of Management Support, OMA on 301-496-4606, or enter this URL: <https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx>.

A. Purpose

The contributions of each and every member of the National Institutes of Health's (the "Agency" or "NIH") community are vital to successfully improving people's health and reducing the burden of disease. An environment where people feel welcome, respected, and valued is necessary for all individuals to contribute to their fullest potential. In alignment with this, the NIH is committed to creating and maintaining a work environment that is free of harassment and other inappropriate conduct. Harassment, bullying, intimidation, threats, or other disruptive behaviors are unacceptable and will be handled with administrative and/or legal action, as appropriate. Actions that run counter to our [mission and goals](#) will be met with consequences, no matter who the offender.

B. Policy

The NIH will not tolerate inappropriate conduct or harassment, including sexual harassment. Timely and appropriate action will be taken against any individual found to be in violation of the policy outlined in this document. Through enforcement of this policy, the NIH seeks to prevent, correct, and eliminate unacceptable behavior that is inconsistent with the values and culture of respect and inclusion at the NIH. Retaliatory treatment towards any federal employee or non-federal worker for reporting allegations of inappropriate conduct or harassment, or for participating as a witness in an administrative inquiry or Equal Employment Opportunity (EEO) complaint process, is prohibited.

1. **Inappropriate conduct:** The term "inappropriate conduct" is broader than the definitions of harassment and sexual harassment listed below to include any comments or conduct that disparages or demonstrates hostility or aversion towards any person that could reasonably be perceived as disruptive, disrespectful, offensive, or inappropriate in the workplace. Examples include, but are not limited to:

- Actions or behaviors that adversely impact Agency operations, productivity, and/or work environment
- Inappropriate communication such as slurs, epithets, ridicule, rude comments, or insults
- Yelling or emotional outbursts, using expletives, throwing objects, or banging/slamming doors
- Inappropriate touching or any form of physical intimidation or aggression (e.g., holding, restraining, impeding or blocking movement, following, inappropriate contact or advances, bullying, or any other forms of inappropriate touching)
- Engaging in a personal relationship with someone in an inherently unequal position where there is a real or perceived authority or influence over the other's conditions of employment; has the ability to directly impact the other's career progression. This may include formal and informal supervisory relationships[\[1\]](#).
- Inappropriate gestures, expressions, pictures, or graffiti
- Threats made against others or other threatening behavior
- Psychological bullying or intimidation, such as making statements that are false, malicious, disparaging, or derogatory with the intent to hurt another's reputation

1. **Harassment:** Unwelcome, deliberate, or repeated unsolicited verbal or physical conduct that is based upon protected classes[\[2\]](#) (race, color, religion, sex, and national origin), including, but not limited to, comments, gestures, graphic materials, physical contact, solicitation of favors, when:

- Submission to or rejection of the conduct by an individual could be used as the basis for employment decisions affecting the individual; or
- The conduct is severe or pervasive enough that it substantially interferes with an individual's work performance or creates a work environment that a reasonable person would consider intimidating, hostile, or abusive. For the purposes of this policy the "reasonable person" standard considers the employee's perspective and assesses if a reasonable person exposed to the same or similar circumstances would find the environment hostile, intimidating, or offensive.

1. **Sexual harassment:** A form of harassment that violates [Title VII of the Civil Rights Act of 1964](#). Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. Examples include, but are not limited to, the following:

- Repeated attempts to establish an unwanted relationship
- Sharing sexually inappropriate images or videos, such as pornography, with others in the workplace
- Sending suggestive letters, notes, texts, or e-mails
- Displaying inappropriate sexual images in the workplace
- Telling lewd jokes or sharing sexual anecdotes
- Making inappropriate sexual gestures
- Staring in a sexually suggestive or offensive manner or inappropriate whistling
- Making sexual comments about appearance, clothing, or body parts
- Inappropriate touching, including pinching, patting, rubbing, or purposefully brushing up against another person
- Making offensive comments or asking questions about someone's sexual history, orientation, or gender identity

[1] Authority within professional relationships may result from actual supervision, mentoring, reviewing, advising, evaluating, teaching, or personal relationships with external partners where a real or perceived power imbalance exists. For more information, please see the NIH Policy Statement on Personal Relationships in the Workplace.

[2] Conduct that is based on a protected class (race, color, religion, sex, and national origin), the ADEA (discrimination on the basis of age when the aggrieved individual is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of disability), the Equal Pay Act (sex-based wage discrimination), or GINA (discrimination on the basis of genetic

information) , which constitutes a violation of 29 C.F.R. Part 1614, and, thus falls within the purview of [Title VII of the Civil Rights Act of 1964](#).

C. Scope

This policy covers all federal employees and non-federal workers, as defined below, regardless of position. As such, each federal employee and non-federal worker is expected to comply with this policy. Management is responsible for taking appropriate action against any federal employee who violates this policy. Appropriate action for federal employees may include, but is not limited to: written counseling, reprimand, suspension, demotion, or removal from one's position and/or from the Federal Service. Such actions may also be considered when making administrative decisions related to funding, staffing, and other resources. NIH leadership has designated the NIH Civil Program as the entity charged with receiving allegations of harassment and overseeing the appropriate inquiry. The principles in this policy also apply to all individuals who visit, including extended visitors, at all NIH facilities.

Federal employee: An individual of the NIH who is employed pursuant to an appointing authority that grants them federal status by law and benefits conferred to them as a federal employee. This includes: Title 5 employees (GS, WG, GP/GR, Title 28) all Executives (SES and Senior Title 42), Commissioned Corps Officers, and all Title 42 employees (Undergraduate Scholarship Program (UGSP), Clinical and Research Fellows, Staff/ Senior Clinicians/Scientists, Senior Biomedical Research Service, Senior Scientific Officers (SSO) and Science Policy or Program Leaders (SPL-2), Tenure Track and Tenured Investigators).

Non-federal worker: Those individuals who perform work for the NIH but have not been employed under an appointing authority that grants them federal status by law and benefits conferred to them as a federal employee. This includes: all Trainees and Interns^[1], Volunteers and Special Volunteers, Guest Researchers, and Contractors.

^[1] Includes all trainees appointed under the following programs: Summer Intern, Postbaccalaureate and Postdoctoral Intramural Research Training Award (IRTA) and Cancer Research Training Award (CRTA), Graduate Partnerships Program (GPP), Medical/Dental Student, Visiting Fellow, and all other student programs.

D. Procedures

Reporting an Allegation of Harassment or Inappropriate Conduct

Any federal employee or non-federal worker who believes they have experienced harassment or inappropriate conduct may report such behavior to any manager, the NIH Civil Program, or the NIH Office of Equity, Diversity, and Inclusion (EDI). They are not required to make such a report only to their immediate supervisor (or in the case of Government contractors, their Contracting Officer Representative (COR) or employing company) or the supervisor who

they alleged engaged in the behavior. The reporting party may remain anonymous. However, to remain anonymous, key details will need to be omitted which will limit the Agency's ability to conduct a thorough inquiry and take corrective administrative action. If the reporting party would like to discuss the allegations in a confidential setting, they should contact the Employee Assistance Program or the NIH Ombudsman's Office, both of which operate under principles of confidentiality. Once an allegation is raised to any federal manager, the NIH is required by law to initiate a prompt administrative inquiry, as described below.

Raising an allegation with the NIH Civil Program under this policy is not equivalent to or in lieu of filing an EEO Complaint of Discrimination, under 29 C.F.R. 1614, or a grievance under the administrative or negotiated procedures included in the applicable Collective Bargaining Agreement (CBA).^[1] The Agency's responsibility to conduct an administrative inquiry is a stand-alone requirement to ensure that the allegation is examined expeditiously and any inappropriate behavior is curtailed quickly. If a federal employee wishes to pursue an EEO complaint, they must contact EDI within 45 days of the discriminatory incident in order to file a Pre-Complaint of Discrimination. Once an EEO complaint is filed with an allegation of discriminatory workplace harassment, EDI will notify the Institute/Center/Office (ICO) and the NIH Civil Program of the allegation, which will initiate NIH's obligation to conduct an internal and, if applicable, external administrative inquiry.

Witness to Harassment or Inappropriate Conduct

Any federal employee or non-federal worker who believes they are witnesses to harassment or inappropriate conduct should report the behavior to a manager (or in the case of Government contractors, their COR), the NIH Civil Program, or EDI as soon as possible so an appropriate administrative inquiry can be conducted and appropriate corrective action implemented. Every member of the NIH community has an obligation to assist in eliminating harassment.

Management Responsibilities

NIH managers or supervisors have an obligation to report allegations of harassment to the NIH Civil Program as soon as possible. Federal employees and non-federal workers who come forward with a harassment allegation should be informed that managers and supervisors have an obligation to report the alleged harassment and an internal administrative inquiry will be conducted. This obligation of management to report and the subsequent administrative inquiry into the harassment allegation is required **even if the individual coming forward wishes to remain anonymous, requests confidentiality, or does not wish the complaint to be addressed with the alleged harasser.** This obligation exists even if the reporting party is not under the supervision of the manager or supervisor who received the allegation about harassment. Management is expected to take corrective action against any

federal employee who violates this policy. Managers and supervisors must not discourage staff from or reprimand staff for contacting the NIH Civil Program. Retaliatory treatment towards any federal employee or non-federal worker for reporting allegations of inappropriate conduct or harassment, or for participating as a witness in an administrative inquiry or EEO complaint process, is prohibited. Retaliation is defined as punishment of an employee by a supervisor for engaging in legally protected activity, such as making an allegation of harassment or participating in an administrative inquiry.

Administrative Inquiries into Harassment or Inappropriate Conduct Allegations

Once an allegation of harassment is reported to the NIH Civil Program, NIH Civil Program staff will take the following actions:

1. Contact the reporting party to conduct an initial review to determine if an administrative inquiry is required. If the reporting party chooses to remain anonymous, NIH Civil Program staff will proceed with the next steps to the greatest extent possible given the information available.
2. Notify the ICO Executive Officer or their designee and the servicing Employee and Labor Relations Specialist of the nature of the allegations, next steps, and who else will be contacted as part of process (e.g., ICO management, potential witnesses, Office of Intramural Training and Education, contract companies, etc.).
3. Initiate an internal administrative inquiry. The inquiry is a prompt internal management review to include a discussion with witnesses, the parties involved, and a collection and review of evidence, including witness statements. This type of administrative review can take on a variety of characteristics depending on the nature and complexity of the allegations. Internal administrative inquiries should typically be completed within ten (10) business days from receiving the allegation regarding harassment and absent extenuating circumstances. The NIH Civil Program has the discretion to determine the type of review that may be required to ensure a swift, objective examination of the allegation to determine if inappropriate conduct or harassment has occurred.
4. NIH Civil Program staff will review the documentation and consider the record as a whole to determine if the preponderance of evidence supports that a violation of NIH policy has occurred.
5. If the internal administrative inquiry results do not support that a violation of policy has occurred, the ICO Executive Officer or their designee will be notified and a close-out notification will be sent to the reporting party and the subject of the allegation. If inappropriate conduct or other workplace issues are identified, they will be referred to ICO management and Employee and Labor Relations to address.
6. If the internal administrative inquiry results indicate the situation is confounding or has a large, complex scope and potential impact, NIH Civil Program staff will notify the ICO Executive Officer or their designee and initiate an external administrative inquiry conducted by a neutral third party. The external administrative inquiry should be conducted expeditiously, and the timeframe for completion will vary depending on

circumstances, e.g., lead time for retention of a contract investigator.

7. If the external administrative inquiry results supports that a violation of policy has occurred, NIH Civil Program staff will coordinate with Employee and Labor Relations and the ICO Executive Officer to develop and implement corrective administrative action that is appropriate given the circumstances.
8. If the external administrative inquiry does not support that a violation of policy has occurred, the ICO Executive Officer or their designee will be notified and a close-out notification will be sent to the reporting party and the subject of the allegation.
9. When a Government contractor is involved, the preceding steps will include the contracting officer, the COR, and the contracting company as appropriate.

[1] This policy does not, nor is it intended to, supersede the policies and/or procedures of any collective bargaining agreement in effect as of the date of publication.

E. Resolution

Corrective Administrative Action

When it is determined a policy has been violated, NIH Civil Program staff will coordinate with the servicing Employee and Labor Relations Specialist and the ICO Executive Officer to develop corrective administrative action. If the offender is a Government contractor, corrective and/or disciplinary action will be the responsibility of the contracting company and negative performance may be recorded in the Contractor Performance Assessment Reporting System (CPARS), if warranted. The corrective administrative action can include a variety of interventions as well as appropriate disciplinary actions. The interventions may include training, facilitated discussions for the team, and/or collaborative work with the Employee Assistance Program or the Office of the Ombudsman. Once the ICO, in coordination with the NIH Civil Program and Employee and Labor Relations, determines the corrective administrative action, they will submit the plan via prescribed format including the action items and targeted completion dates to the NIH Civil Program.

Should an ICO not cooperate with the NIH Civil Program throughout this process or not implement the corrective administrative action in whole or in part, NIH Civil Program staff will notify the NIH Principal Deputy Director, who will request a meeting with the ICO Director and Executive Officer so they may explain their lack of coordination or their rationale for not implementing the corrective administrative action in full.

Communicating Outcomes to Reporting Parties

The NIH Civil Program will notify the reporting party of the status of the administrative inquiry and when it has been referred to the appropriate management officials. However, because of privacy rights and procedures, no further information will be provided.

F. Roles and Responsibilities

1. The Director, NIH, is the Agency Responsible Official for:

- a. developing the NIH policy for preventing and addressing harassing conduct in the workplace; and
- b. ensuring resources are allocated to promote a safe and civil organizational culture in all NIH-supported workplaces and scientific meetings to create an environment where all individuals are treated with respect and dignity.

2. The Principal Deputy Director, NIH, is responsible for:

- a. developing the NIH policy for preventing and addressing harassing conduct in the workplace;
- b. ensuring resources are allocated to promote a safe and civil organizational culture in all NIH-supported workplaces and scientific meetings to create an environment where all individuals are treated with respect and dignity; and
- c. holding ICO leadership accountable if they do not coordinate fully with the NIH Civil Program or they fail to implement the recommended corrective administrative action in full.

3. The Deputy Director for Management (DDM), NIH, is responsible for:

- a. oversight of the NIH Civil Program;
- b. ensuring all federal and nonfederal staff (including trainees and fellows) successfully complete the Prevention of Sexual Harassment (POSH) training as required, and to carry out their duties as listed below;
- c. ensuring that all individuals at NIH facilities are provided information on the NIH harassment and workplace violence policies and procedures;
- d. serving as the primary contact for ICOs in response to allegations raised to them by an NIH Civil Program Coordinator;
- e. partnering with the NIH Civil Program with the objective of ensuring that all administrative inquiries and subsequent corrective administrative action are appropriate and consistent with similar cases across the NIH; and
- f. seeking to ensure that managers and supervisors report allegations of harassment as soon as possible and that they cooperate fully with the NIH Civil Program on related inquiries and corrective administrative action to address matters

appropriately.

4. Managers and Supervisors are responsible for:

- a. working to prevent and address harassment and inappropriate conduct in the workplace, promoting a safe and civil organizational culture, and creating an environment where all individuals are treated with respect and dignity;
- b. arranging for thorough and appropriate pre-hire reference screening to be performed, including effective completion of reference checks and utilizing behavioral-based interview questions;
- c. ensure all federal and nonfederal (including trainees and fellows) staff successfully complete the Prevention of Sexual Harassment (POSH) training as required;
- d. promptly reporting any known allegations of harassment to the NIH Civil Program;
- e. coordinating closely with the NIH Civil Program and the servicing Employee and Labor Relations staff to appropriately address allegations of harassment or inappropriate conduct;
- f. promptly cooperating fully with the NIH Civil Program during internal and external administrative inquiries to look into allegations of harassment;
- g. being cognizant of situations that have the potential to escalate conflict and promptly addressing them with all concerned parties;
- h. providing information about and encouraging staff to utilize the resources offered by such organizations as the Employee Assistance Program and the Office of the Ombudsman;
- i. providing information about and encouraging intramural trainees to utilize resources offered by the Office of Intramural Training and Education (OITE); and
- j. ensuring that staff have time and opportunity to attend training for understanding and responding to harassment and inappropriate conduct.

5. All federal employees, non-federal workers, and other individuals at NIH facilities are responsible for:

- a. conducting oneself in a manner that promotes and facilitates a safe and civil organizational culture, and an environment where all individuals are treated with respect and dignity;
- b. promptly reporting if they believe they have experienced or have witnessed harassment, inappropriate conduct, threats, intimidating or bullying behavior to appropriate authorities (such as their supervisory chain of command, the NIH Civil Program, or the NIH police);
- c. cooperating fully in administrative inquiries of allegations of harassment and inappropriate conduct;
- d. respecting the integrity of the process by truthfully and accurately participating in all inquiries;

- e. being aware that they cannot ask an NIH manager or supervisor to keep their allegations regarding harassment or workplace violence confidential, even if the manager or supervisor is a mentor or otherwise outside of the employee's chain of command;
- f. reporting any restraining orders and other protective court orders to the NIH Civil Program or the NIH Police so assistance can be offered and safety measures can be implemented at the work site; and if a contractor or company that employs them, ensuring compliance with all Department of Labor (DOL) and Equal Employment Opportunity Commission (EEOC) statutory requirements as well as adherence to Federal Acquisition Regulation clause 52.222-26 Equal Opportunity.

6. NIH Civil Program, Workforce Relations Division (WRD), Office of Human Resources (OHR), is responsible for:

- a. overseeing inquiries into all allegations involving potential harassment or inappropriate conduct as defined above;
- b. assessing the urgency and whether there is a need for a Response Team intervention or assistance to address an allegation, including answering questions, giving advice, and making referrals as needed;
- c. ensuring appropriate post-incident response;
- d. following up with ICO to ensure necessary steps, action, and closure;
- e. providing regular updates on case data to NIH leadership in order to ensure proper program oversight; and
- f. serving as the initial contact point with external organizations interested in the program.

7. Employee and Labor Relations Branch (ELRB), WRD, OHR, OM, OD:

- a. providing guidance in reviewing or conducting inquiries into allegations of workplace conflicts raised by supervisors, managers, NIH Civil Program Response Specialists, law enforcement personnel, and other individuals at NIH facilities;
- b. providing advice and assistance to managers regarding appropriate personnel and administrative actions related to harassment, bullying or intimidation, threats, or workplace conflict; and
- c. consulting with NIH Civil Program and the Office of the General Counsel (OGC), as necessary, on how to prevent or respond to an incident.

8. The NIH Office of Intramural Training & Education (OITE), Office of Intramural Research (OIR), is responsible for:

- a. providing agency-wide leadership and guidance on issues relating to the intramural training environment and communicating concerns to the Deputy Director of Intramural Research;
- b. coordinating with the NIH Civil Program on all cases involving trainees;

- c. working with Employee and Labor Relations and ICO leadership to address trainee issues, including but not limited to, ICO Training and Clinical Directors, Executive Officers, and Scientific or Deputy Scientific Directors, as appropriate;
- d. offering comprehensive training and individual guidance to trainees in their personal and professional development, and requiring that responsible conduct and the reporting of inappropriate conduct is clearly articulated and promoted across all development platforms; and
- e. providing information to intramural trainees about the resources offered by the Employee Assistance Program and the Office of the Ombudsman.

9. The Office of Equity, Diversity, and Inclusion, OD, is responsible for:

- a. providing agency-wide leadership and guidance on issues of equal employment opportunity, diversity, and inclusion;
- b. oversight of all discrimination complaints filed under 29 CFR Part 1614;
- c. notification to the NIH Civil Program of complaints of discrimination that allege harassment;
- d. providing training and guidance to the NIH community on their rights and responsibilities in regard to EEO laws and policies;
- e. promoting a diverse and inclusive working environment where individuals are treated equitably and valued for their individuality;
- f. examining employment policies, procedures, and practices to identify employment barriers to EEO;
- g. eliminating identified barriers to EEO; and
- h. providing guidance to managers as appropriate, and when requested, on how to address allegations of unlawful harassment as a result of a legally protected basis.

G. Additional Resources

1. The Employee Assistance Program (EAP), Division of Occupational Health and Safety (DOHS), Office of Research Services, ORS, OD, provides:

- a. confidential, neutral, and personalized consultation, short-term counseling, crisis intervention, referral and follow up services to all members of the NIH workforce to enhance personal and professional wellbeing;
- b. training on a variety of topics such as Emotional Intelligence, Organizational Transition, Stress Management, Managers Workshop, Work/Life Balance, and Workplace Communication to educate and inspire workgroups to create a healthier, safer, and more productive workplace;
- c. a full range of onsite crisis intervention services to individuals and workgroups impacted by traumatic events;
- d. behavioral health expertise, guidance, and support to assist managers successfully navigate complex workplace situations; and
- e. information to intramural trainees about the resources offered by OITE.

2. The Office of the Ombudsman, Center for Cooperative Resolution provides:

- a. confidential, informal, and neutral assistance to NIH staff to address and resolve work-related conflicts and issues;
- b. consultation, coaching, and mediation and facilitation services to individuals as appropriate, and when requested, to help resolve work-related conflicts;
- c. training to the NIH community on conflict resolution, negotiation, communication, and other topics to help prevent and mitigate workplace problems;
- d. consultation and guidance to managers to address and resolve work-related conflicts on individual, group, and organizational levels; and
- e. information to intramural trainees about the resources offered by OITE.

H. References

For more information about the following references, please call Civil at 301-402-4845 or refer to the NIH Civil website - <https://hr.nih.gov/working-nih/civil>.

1. [Title VII of the Civil Rights Act of 1964](#)
2. [29 CFR Part 1614 – Federal Sector Equal Employment Opportunity](#)
3. [HHS Anti-Harassment Policy](#) (April 17, 2017)
4. [NIH Table of Penalties](#) (NIH Only)
5. <https://www.edi.nih.gov/>
6. <https://www.edi.nih.gov/policy/statutes>
7. [45 CFR Part 73, HHS Residual Standards of Conduct](#)
8. [5 CFR Part 2635 - Standards of Ethical Conduct for Employees of the Executive Branch \(5 CFR 2635\)](#)
9. [NIH Manual Chapter 2300-752-3 - Restricting, Removing and/or Banning Individuals from NIH Work Places](#)
10. [NIH Manual Chapter 1743, Keeping and Destroying Records](#)
11. [5 CFR Part 752 – Adverse Actions](#)
12. [OPM Guide on Responding to Domestic Violence: Where Federal Employees Can Find Help](#)